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1617

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Intellectual Property Causes  
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In re application of : Shigeo TAKADA et al.

Serial No. : 10/088,523 (National Phase of PCT/JP00/06704) 9 2003

Filed : July 15, 2002

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For : ANTIOBESITY

**TC 1700**

**Mail Stop Non-Fee**  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Transmitted herewith is an Election with Traverse in the above-captioned application.

Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

An Information Disclosure Statement, PTO Form 1449, and references cited.

No additional fee is required.

The fee has been calculated as shown below:

| Claims<br>After<br>Amendment        | No. Claims<br>Previously<br>Paid For | Present<br>Extra | Small Entity |     | Other Than A<br>Small Entity |        |
|-------------------------------------|--------------------------------------|------------------|--------------|-----|------------------------------|--------|
|                                     |                                      |                  | Rate         | Fee | Rate                         | Fee    |
| Total Claims: 9                     | *20                                  | 0                | x 9=         | \$  | x 18=                        | \$0.00 |
| Indep. Claims: 5                    | **5                                  | 0                | x 43=        | \$  | x 86=                        | \$0.00 |
| Multiple Dependent Claims Presented |                                      |                  | +145=        | \$  | +290=                        | \$0.00 |
| Extension Fees for Month            |                                      |                  |              | \$  |                              | \$0.00 |
|                                     |                                      |                  | Total:       | \$  | Total:                       | \$0.00 |

\*If less than 20, write 20

\*\*If less than 3, write 3

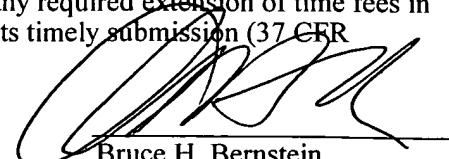
Please charge my Deposit Account No. 19-0089 in the amount of \$\_\_\_\_\_.

N/A A Check in the amount of \$\_\_\_\_\_ to cover the filing/extension fee is included.

The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

Any additional filing fees required under 37 C.F.R. 1.16.

Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 CFR 1.136)(a)(3).



Bruce H. Bernstein  
Reg. No. 29,027

Reg. No. 33,094

Attorney Docket No. P22165

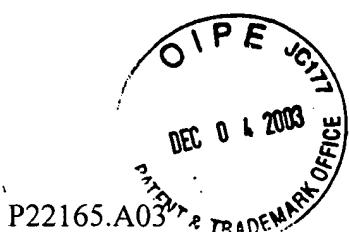
**Mail Stop Non-Fee**  
Group Art Unit : 1617

Examiner : WEELS

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DEC 09 2003

**TC 1700**



P22165.A03

Application No. 10/088,523

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Shigeo TAKADA et al.

Group Art Unit : 1617

Appl. No : 10/088,523  
(National Stage of PCT/JP00/06704)

Examiner : Wells

I.A. Filed : September 28, 2000

For : ANTIOBESITY AGENT

**ELECTION WITH TRAVERSE**

Commissioner For Patents  
PO Box 1450,  
Alexandria, Virginia 23313-1450

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**TC 1700**

Sir:

This is in response to the requirement for restriction under 35 U.S.C. 121 and 372 mailed from the U.S. Patent and Trademark Office on November 4, 2003, which sets a one month shortened statutory period for response until December 4, 2003.

Applicants note that this response is being filed by the initial due date for response whereby an extension of time and the government fee associated therewith should not be necessary for maintaining the pendency of the application. However, if any extension of time is required to maintain the pendency of this application, this is an express request for any required extension of time and authorization to charge any necessary fee to Deposit Account No. 19-0089.

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks which follow:

**DISCUSSION OF RESTRICTION REQUIREMENT**

Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372:

Group I. Claims 1-3, 5-8, 10-11, 13-17, drawn to anti-obesity agents.

Group II. Claims 4 and 12, drawn to an agent for enhancing the effect of kinesitherapy.

Group III. Claim 9, drawn to a food or drink.

The requirement contends that the inventions of Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. In particular, it is asserted that the technical feature linking Groups I-III appears to be that they all relate to a poly lactic acid. However, it is asserted that JP 409094065 and JP05255097 teach that lactic acid is known for treating obesity, and therefore the special technical feature does not define a contribution over the prior art, and the groups are not so linked by the same or corresponding special technical feature as to form a single general inventive concept.

**ELECTION**

In order to be responsive to the requirement for restriction, Applicants elect the invention set forth in Group I, claims 1-3, 5-8, 11, 11 and 13-17, with traverse.

For the reasons set forth below, Applicants respectfully submit that the restriction requirement is improper, and should be withdrawn, whereby an action on the merits of all of the pending claims is warranted.

**TRAVERSE**

Notwithstanding the election of the claims of Group I in order to be responsive to the requirement for restriction, Applicants respectfully traverse the requirement.

Applicants respectfully submit that a search of each of the invention should be made when performing an examination on the merits of the elected groups of claims. Accordingly, there should be no undue burden to examiner each of the groups of invention. For example, the claim of Group III can be considered to be directed to a combination that includes subject matter recited in the elected claims.

In any event, Applicants reverse the right to traverse any potential rejection that may be made against the claims of elected Group I. Moreover, upon allowance of claims in Group I, the non-elected claims should be rejoined and examined.

In view of the foregoing, it is respectfully requested that the Examiner seriously reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application.

**CONCLUSION**

For the reasons discussed above, it is respectfully submitted that the requirement for restriction is improper because unity of invention is present, and the requirement should be withdrawn.

Withdrawal of the requirement for the restriction with examination of all pending claims is respectfully requested.